



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

CRS

Docket No: 4010-98

2 June 1999

[REDACTED]

Dear [REDACTED]

This is in reference to your application on behalf of your former late husband for correction of his naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 26 May 1999. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your former husband's naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that your former husband enlisted in the Marine Corps on 17 December 1974 at age 20. His record reflects that he received three nonjudicial punishments. The offenses included stealing two shirts valued at \$6.86 and absence from his appointed place of duty on two occasions.

His military record shows that on 11 December 1975 he submitted a written request for an undesirable discharge in order to avoid trial by court-martial for possession of marijuana on two occasions. The record also shows that prior to submitting this request he conferred with a qualified military lawyer at which time he was advised of his rights and warned of the probable adverse consequences of accepting such a discharge. The Board found that his request was granted and, as a result of this action, he was spared the stigma of a court-martial conviction and the potential penalties of a punitive discharge and confinement at hard labor. He received an undesirable discharge on 29 December 1975.

In its review of your application the Board carefully weighed all potentially mitigating factors, such as his youth and immaturity and the contention that he may have received a general discharge. However, the Board found these factors were not sufficient to warrant recharacterization of his discharge, given his use of drugs. The Board believed that considerable clemency was extended to him when his request to avoid trial by court-martial was approved since, by this action, he escaped the possibility of confinement at hard labor and a punitive discharge. Further, the Board concluded that he received the benefit of his bargain when his request for discharge was granted and no change should now be permitted. In this regard, there is no evidence that he received a general discharge. Therefore, the Board concluded that his discharge was proper as issued and no change is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director